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BY ECF AND E-MAIL

October 15, 2020

The Honorable Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

MEMO ENDORSED

RE: Park Insurance Co. v. Vullo, No. 18-cv-9628

Dear Judge Failla:

This Office represents defendants Maria T. Vullo, sued solely in her individual capacity as former Superintendent of Financial Services of the State of New York, and Linda Lacewell, sued solely in her official capacity as current Superintendent of Financial Services of the State of New York (collectively “Defendants”), in the above-referenced matter.¹ As the Court is aware, this action is related to a proceeding that the New York State Department of Financial Services brought in New York State Supreme Court to liquidate the plaintiff herein, Park Insurance Company (“Plaintiff”), on multiple grounds specified in New York Insurance Law § 7402, pending before Justice Shlomo Hagler (the “Liquidation Proceeding”).

As directed by the Court on August 24, 2020, we write to provide a status update to the Court regarding the Liquidation Proceeding.

On September 22, 2020, Justice Hagler issued a Decision and Order (the “Liquidation Order”) finding that, based on the 15-day trial held between December 2018 and September 2019, the Superintendent had proven by a preponderance of the evidence that Park was insolvent as of December 31, 2017 within the meaning of New York Insurance Law § 7402(a); and that Park had not established its affirmative defense that it was solvent as of September 30, 2018. On that basis, and without reaching the other statutory grounds relied upon by DFS, Justice Hagler ordered that Park be placed into liquidation under Article 74 of the New York Insurance law. Justice Hagler’s September 22, 2020 Liquidation Order is attached to this letter as Exhibit A.

On September 23, 2020, Park filed a notice of appeal to the New York Supreme Court, Appellate Division, First Department, and moved for a discretionary stay of the Liquidation Order pending its appeal. The First Department issued an interim stay pending the parties’ full briefing

¹ Pursuant to Fed. R. Civ. P. 25(d), to the extent that prospective injunctive relief is sought against Superintendent Vullo in her official capacity, current Superintendent of Financial Services Linda Lacewell is deemed to be substituted as Defendant.

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on Park's stay motion, which, *inter alia*, requires Park to seek approval from the Superintendent to engage in business transactions and permitting the Superintendent to begin collection and review of Park's records. The First Department's interim stay order (as modified on September 30, 2020) is attached to this letter as Exhibit B. The parties are currently briefing Park's motion for a stay pending appeal. The motion is returnable before the First Department on Monday, October 19, 2020.

In light of the Liquidation Order and pending appeal, Defendants respectfully request that the Court continue its stay of proceedings pending the resolution of the appeal before the First Department. If Park is placed into liquidation, either because the stay motion is denied or the Liquidation Order is affirmed on appeal, Superintendent Lacewell, in her capacity as Liquidator, will immediately take control of Park's business and assets, including all of Park's "rights of action." See N.Y. Ins. Law § 4705(b); Liquidation Order at p.14, ¶ 4. Under those circumstances, it will become the prerogative of the Liquidator to decide whether or not to continue this action, and if she declines to do so, there will be no need to move forward with briefing a motion to dismiss.

Park does not join in the contents of this letter, but does agree that briefing should continue to be held in abeyance.

Defendants appreciate the Court's attention to this matter.

Respectfully submitted,

/s/ Matthew L. Conrad
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cc: Robert Lewin, Esq. (by ECF)

The Court is in receipt of the parties' status letter. Based on Defendants' representations regarding the appeal process, the Court agrees that an extension to the present stay is warranted. Therefore, the Court ORDERS the parties to submit a status letter either upon the resolution of the appeal before the First Department or by November 16, 2020, whichever is earlier.

Dated: October 16, 2020
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE